IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9242 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVUBHA TEJUBHA

Versus

STATE OF GUJARAT

Appearance:

MRS DT SHAH for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

RULE SERVED for Respondent No. 2

MR SP HASURKAR for Respondent No. 4

RULE NOT RECD BACK for Respondent No. 5, 6

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 05/05/2000

ORAL JUDGEMENT :

The present petition is filed by the petitioner, who was employed as a daily wager by the Executive Engineer, Roads & Buildings Division, Surendranagar and

was working under respondent no.3, the Deputy Executive Engineer, Roads & Buildings Sub Division, Surendranagar since 1970. It is the case of the petitioner that the petitioner was appointed as a work charged by respondent no.2 by an order dated 7.1.1987 and the petitioner retired on 30.11.1996, on reaching the age of superannuation. The present petition is required to be filed as the petitioner denied the pensionary benefits. It is the case of the petitioner that the petitioner filed an application being Gratuity Application No.57/97 before the competent authority under the Payment of Gratuity Act, 1972 at Surendranagar, which came to be granted in favour of the petitioner.

2. It is the case of the petitioner that respondents nos.2 and 3 produced all relevant papers/ record before the authority and on perusal of the same the controlling authority came to the conclusion that the petitioner at the time of superannuation had completed more than 26 years of service. However, the petitioner is not granted benefits of pension and therefore, the petitioner made an application on 3.3.1997, a copy of which is produced at Annexure 'C' to the petition. Said application was not proceeded with by the respondents. The petitioner learnt that his application was not proceeded further on the ground that he had not completed 10 years of service from 7.1.1987 till the date of his superannuation, i.e. in the year 1996. It is the case of the petitioner that his case is covered by various circulars and resolutions passed by the State Government prescribing for computation of qualifying service. The petitioner also submitted that in fact the petitioner has put in the service without there being any break and that the nature of the post on which the petitioner was appointed is of permanent nature.

3. It is also submitted by the petitioner that the petitioner was kept as a daily wager and it was only in the year 1987 that he was made work charged and therefore, for no fault on the part of the petitioner that the petitioner is considered not entitled for the pensionary benefits. The petitioner submitted that the petitioner was entitled for the benefits of pension under Circular dated 17.10.1988 and that the qualifying service of the petitioner is required to be computed in light of the contents of the circular dated 24.2.1966.

4. In response to the process of this Court (rule was issued on 10.11.1998 making it returnable on 1.12.1998), the respondent no.4, Treasury Officer, Surendranagar has filed an affidavit in reply and the

only contention, which is raised in the said affidavit is that he is not the sanctioning authority and under the provisions of Rule 198B of the Bombay Civil Service Rules, pension case is required to be prepared by respondent no.2, Executive Engineer, Roads & Buildings Division, Surendranagar and the same is required to be sanctioned by respondents nos.5 and 6, namely, Director, Pension and Provident Fund Office and Accounts Officer, Pension and Provident Fund Office. Besides this, there is no other affidavit filed on behalf of any of the respondents.

5. The learned advocate for the petitioner, Ms.D.T. Shah placed reliance upon the judgement in Special Civil Application No.3243 of 1996 rendered by this Court (Coram : S.K. Keshote, J.) on 9.4.1999. It is the case of the petitioner that the facts of both these cases are identical and that the similar relief is required to be granted to the petitioner. Ms.D.T. Shah invited attention of the Court to the contents of para 3 of the said judgement which reads as under :

> "The contention of the learned counsel for the petitioners is that the daily wages services of the petitioners as daily wagers rendered by them prior to they have been brought in the work charged established by the respondent are countable towards the qualifying services for pension. Whereas the contention of the learned counsel for the respondents is that the same cannot be countable and for which reliance has been placed on some of the provisions of Bombay Civil Services Rules. The petitioners made reference to the Govt. Resolution No.WCE/ 1588/ (5)(2)/G2 dated 17th October 1988 which inter alia, what the learned counsel for the petitioners contend, provides that if the daily wager has put in more than ten years services as on 1.10.1988 he shall be entitled for pension, gratuity, etc. However, this point does not detain much to this Court as these matters are squarely covered by the two decisions of this court one given by the learned Single Judge in Special Civil Application No.2836/98 decided on 27th August 1988 and second of the Division Bench in L.P.A. No.1495/97 decided on 6th August 1998. Learned counsel for the respondent also does not dispute that these matters are covered by these two decisions."

6. Ms.D.T. Shah also invited attention of the Court

to the contents of para 6. In this para the Court considered the aspect of granting interest on the amount payable to the petitioners. The contents of para 6 reads as under:

> "Now the question does arise for the consideration of this Court whether the petitioners should be awarded interest on the amount of retirementary benefits ultimately found payable to them by the respondents. This court has considered this aspect and fond that as per the resolution of the State Govt. dated 17th October 1988 the services rendered by the daily wagers subject to the condition provided therein are countable towards qualifying services. It is really unfortunate that merely because earlier to this resolution the petitioners have been taken in workcharge services they cannot be deprived of the benefits which are accrued to the daily wagers under resolution dated 17th October, 1988. In case such an interpretation given to the resolution of 17th October 1988, which is sought to be pressed by the learned counsel for the respondents then certainly it will make discrimination more precisely a hostile discrimination without there being any basis for the same. Those daily wagers who could not come in the workcharge establishment before 17th October 1988 they will be benefitted for all these benefits as given out under the said resolution but not those daily wagers who have come in the workcharged establishment earlier to this resolution. The sum and substance of this resolution is that the daily wages services subject to the condition laid down therein are countable towards the qualifying services or pension and if the daily wages services of the petitioners is of that quality and requirement as what it is contemplated under the said resolution, the same cannot be excluded from consideration and counted towards the qualifying services of pension. If such an interpretation is given to this resolution then certainly it will be contrary or unconstitutional as being violative of Articles 14 and 21 of the Constitution. These petitioners are the low paid employees and though otherwise they were entitled for pension, gratuity and other retirementary benefits as per the resolution of 17th October, 1988 very arbitrary approach has been taken by none other than the officers and functionaries of

> a welfare state, which resulted in deprival of monetary benefits to these persons. It is not unknown that the retirees from the govt. services are keeping their amount which they receive towards their retirementary benefits in the fix term deposits or invests in some other benefit scheme so that they get the monthly return and from pension and this monthly return they may be able to meet out the expenses of bare necessities of life. Looking to the facts of this case as well as the underlying object, purpose and intention of the resolution dated 17th October 1988 and the two decisions of this court, reference of which has been made above, I consider it to be a fit case where the petitioners are to be given the interest on the amount of retirementary benefits for which they are found entitled. The respondents are directed to pay to the petitioners interest on retirement dues as found payable to them at the rate of 12% from the date of filing of these special civil applications, i.e. in the special civil application no.3243/96 w.e.f. 30th April 1996 and in the special civil application no.3382/96 w.e.f. 2nd May 1996 respectively."

7. The said judgement relied upon the decision of this Court in Letters Patent Appeal No.1495 of 1997 decided on 6.8.1998, (Coram: K.G. Balakrishnan & J.M. Panchal, JJ.) a copy of which is also made available to this Court by the learned advocate.

8. In the result this petition succeeds. The respondents are directed to consider the case of the petitioner for grant of pension to the petitioner from 1.12.1996. The respondents shall consider the case of the petitioner within three months from the date of receipt of the writ of this Court. The respondents are further directed that in the event of the respondents holding in favour of the petitioner, the petitioner shall be paid the said benefit with 12% interest within further two months from the date of the decision. The respondents are further directed that in case the respondents held against the petitioner they should pass a speaking order and the same shall be communicated to the petitioner by Registered Post A.D. letter.

5. With the aforesaid directions the petition is allowed. Rule is made absolute accordingly. No order as to costs.

5.5.2000 (Ravi R. Tripathi, J.)

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